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EXAMINER

ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,362

Applicant(s)

TESHIMA, ATSUSHI

Examiner

Nicholas D. Rosen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-3 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-33 have been examined.

Specification

Examiner wishes to call Applicant's attention to the fact that in various lines, the words of the specification are quite closely spaced, which could pose a problem if the application is published as a patent.

Claim Objections

Claims 1-13, 26-28, and 31 are objected to because of the following informalities: In the third line of claim 1, "is chained" should be "are chained", and in the eighth line of claim 1, "units provide" should be "units provided". Appropriate correction is required.

Claims 14-24, 29, and 32 are objected to because of the following informalities: In the third line of claim 14, "is chained" should be "are chained". Appropriate correction is required.

Claims 25, 30, and 33 are objected to because of the following informalities: In the fourth line of claim 25, "is chained" should be "are chained". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-13, 26-28, and 31

Claims 1, 2, 5, 6, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (U.S. Patent 6,202,051) in view of Galler ("IP: NYT Digital Commerce: Is Delivery the Dealbreaker for E-Commerce?"). As per claim 1, Woolston discloses a method for operating a virtual shopping mall by using a computer system, the computer system being established on a plurality of chain stores which are chained in advance to one another to form a physical distribution system, each of said chain stores including a terminal base unit for registering virtual goods information including an image, said terminal base units being connectable to the virtual shopping mall by a communication line, said method comprising: registering virtual goods information, which corresponds to a seller's real goods, from one of said terminal base units provided in one of the chain stores to the virtual shopping mall after receiving said virtual goods information from said seller, said registering virtual goods information including capturing the image of said real goods as a part of said virtual goods information (column 3, lines 50-64; column 4, lines 20-46); intermediating trading between said seller and a buyer on said virtual shopping mall by presenting said virtual goods information to the buyer (Abstract; column 4, line 66, through column 5, line 19); and establishing trading between said buyer and said seller, which achieves business on said virtual shopping mall (Abstract; column 4, line 66, through column 6, line 49). Woolston discloses ordering delivery of physical goods to a buyer's desired location,

implying setting a delivery path on the physical distribution system for delivering said real goods from the seller to the buyer in accordance with a buyer's selection (column 5, lines 20-30), but Woolston does not precisely disclose that the delivery is to a terminal base from which the buyer receives said real goods. However, Galler teaches delivering products ordered in electronic commerce to bases at chain stores where buyers receive the real goods (four paragraphs beginning from, "Packagenet, a Fairfield, Iowa, company"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to set the delivery path in accordance with the buyer's selection of a terminal base from which the buyer receives the real goods, for the stated advantage of giving consumers a handy place to pick up packages at convenient times and to help carriers solve the "stop cost" problem by letting them deliver a neighborhood's package to a single location.

As per claim 2, Woolston discloses that said business is intermediated by presenting said image to said buyer (Abstract; column 4, line 66, through column 5, line 19, especially column 5, lines 6-8).

As per claim 5, Woolston discloses the seller's terminal base as at least one of a plurality of real terminal bases to bring in said real goods, implying that it has been set as such (column 2, lines 26-43; column 3, lines 1-15; column 3, line 50, through column 4, line 66).

As per claim 6, Woolston discloses a distribution system including a plurality of real terminal bases (column 2, lines 26-43; column 8, lines 11-15; Figure 1), and

directing delivery of physical goods to a buyer's desired location, implying instructing such a physical distribution system to deliver the real goods (column 5, lines 20-30).

As per claim 28, Woolston discloses that the virtual shopping mall is operated by the computer system devoid of a seller opening a virtual shop (column 4, lines 18-46; the seller does not open a virtual shop in this example, the seller being distinct from the consignment node user).

As per claim 31, Woolston discloses that the terminal base unit comprises an image capturing unit for capturing the image of said real goods as said virtual goods information (column 3, lines 50-64; column 4, lines 20-46; column 8, lines 11-15; Figure 1).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston and Galler, as applied to claim 2 above, and further in view of Cruickshank et al. (U.S. Patent 6,522,738). Woolston does not expressly disclose selecting by said seller whether to modify said virtual goods information about real goods among a plurality of real goods presented by said presenting, but Cruickshank teaches a user selecting whether to modify images or other information for a list presented to seller (column 8, line 32, through column 9, line 29). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the seller to select whether to modify said virtual goods information about real goods among a plurality of real goods presented by said presenting, for the obvious advantages of having the published information accurately reflect the currently available inventory of

real goods, or having the published information include the best available images, written descriptions, etc.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston, Galler, and Cruickshank as applied to claim 3 above, and further in view of official notice. Neither Woolston nor Cruickshank discloses that said presenting disposes each of said images by demagnifying said images and presents demagnified images to said seller, but official notice is taken that it is well known to demagnify images and present demagnified to a viewer of a website, e.g., by going back from a close-up of a particular image to a page of thumbnail images. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to dispose each of said images by demagnifying said images, and present demagnified images to said seller, for the obvious advantage of enabling the seller to see the images together on a screen of ordinary size.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston and Galler as applied to claim 2 above, and further in view of Shkedy (U.S. Patent 6,260,024). Woolston does not expressly disclose that the business is intermediated by presenting said virtual goods information to said buyer so as to secure anonymity of said seller (although there is mention of preserving privacy, column 7), but Shkedy teaches conducting electronic commerce wherein an intermediary secures the anonymity of sellers (column 8, lines 27-39). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the business be intermediated by presenting said virtual goods information to said

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buyer so as to secure anonymity of said seller, for the stated advantage of enabling sellers, for numerous privacy and competitive reasons, not to have their identities revealed.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston and Galler, as applied to claim 1 above, and further in view of official notice. Woolston does not disclose updating a seller's database when trading is established, wherein the computer system stores a trade history for each seller in the seller's database, and setting the fee for the virtual shopping mall lower for those sellers whose amount of past trades stored in said seller's database is large. However, official notice is taken that it is well known to give volume discounts, and to maintain databases of information. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to set the fee for the virtual shopping mall lower for those sellers whose amount of past trades stored in said seller's database is large, for the obvious advantage of encouraging sellers to do business through the virtual shopping mall.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston and Galler as applied to claim 2 above, and further in view of official notice. Woolston does not disclose inspecting goods. However, official notice is taken that it is well known to inspect goods. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to inspect the goods, for such obvious advantages as assuring that the goods a business is shipping are what was ordered, and of good quality, so as to avoid complaints, lawsuits, and the

need to replace defective goods, and to maintain a reputation for quality; and assuring that the goods which one has received are what was ordered, and of good quality, so as to decide whether to pay for them, and whether to request a refund or a replacement. (Claim 10 does not specify who does the inspecting.)

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston, Galler, and as applied to claim 10 above, and further in view of the anonymous article, "eBay Launches the Most Comprehensive Trust and Safety Upgrades to the World's Largest Person-to-Person Trading Site," hereinafter "eBay Launches." As per claim 11, Woolston does not disclose giving a penalty based on a predetermined penalty rule on said virtual shopping mall against said seller if said seller requests to register inappropriate virtual goods information. However, "eBay Launches" discloses forbidding sellers from registering inappropriate virtual goods information (paragraph beginning "An additional upgrade to SafeHarbor 2.0"). "eBay Launches" does not expressly disclose giving a penalty based on a predetermined penalty rule on said virtual shopping mall against said seller in such a case, but does disclose giving a penalty based on a predetermined penalty rule for shill bidders and for bidders who do not honor their commitments (paragraphs beginning "Trust within the community is lessened" and "To help protect sellers, clear policy"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to give a penalty based on a predetermined penalty rule on said virtual shopping mall against said seller if said seller requests to register inappropriate virtual goods information, for the obvious advantage of deterring attempts to register

inappropriate goods, which may expose a virtual shopping mall to legal liability and/or reputational damage.

As per claim 12, "eBay Launches" does not expressly disclose that the predetermined penalty rule for sellers who attempt to register inappropriate products is established to give different penalties against said seller according to the number of registrations of said inappropriate virtual goods information, but does disclose other predetermined penalty rules giving different penalties according to the number of violations (paragraphs beginning "Trust within the community is lessened" and "To help protect sellers, clear policy"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have said predetermined penalty rule be established to give different penalties against said seller according to the number of registrations of said inappropriate virtual goods information, for the obvious advantages of distinguishing between inadvertent and willful violators, and putting greater effort into deterring more severe and systematic violations.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston and Galler as applied to claim 2 above, and further in view of McConnell ("Restaurant No-Shows: Can You Take Them to Court?"). Woolston does not disclose forming a black list, which comprises a list of buyers who have failed to arrive to receive real goods despite that a trade on said virtual shopping mall has been established. However, McConnell teaches blacklisting potential buyers who have failed to arrive to receive real goods despite having arranged to come and purchase goods (Abstract). Hence, it would have been obvious to one of ordinary skill in the art of electronic

commerce at the time of applicant's invention to form a black list comprising a list of buyers who have failed to arrive to receive real goods despite that a trade on said virtual shopping mall has been established, for the obvious advantage of discouraging people from imposing costs on a seller or agent by arranging to pick up goods at a particular location to which goods are shipped, and then failing to arrive.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston and Galler as applied to claim 1 above, and further in view of Scisco ("Tend the Store for World Wide Orders"). As per claim 26, Woolston discloses registering a seller for selling virtual goods (column 2, lines 26-47), but does not expressly disclose reserving a space for presenting said virtual goods upon said registration before registering said virtual goods information. However, Scisco teaches registering a seller for selling virtual goods; and reserving a space for presenting said virtual goods upon said registration before registering said virtual goods information (paragraphs beginning "But a shop on the Internet" and "Price considerations led us"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the method comprise reserving a space for presenting said virtual goods upon said registration before registering said virtual goods information, for the obvious advantage of enabling a seller to make arrangements to sell his goods without requiring him to register his virtual goods information (he may not know just what goods he has available, or how his selection of available goods may change over time, with some items being sold, and more being made or acquired).

As per claim 27, Scisco teaches providing a plurality of units, each representing one of said virtual goods, each representing one of the virtual goods, into the space (paragraphs beginning "We began working with Live Store by entering descriptions" and "Seeing how simple the other changes had been"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the method comprise providing a plurality of units, each representing one of said virtual goods, each representing one of the virtual goods, into the space, for the stated advantage of enabling the seller to present descriptions and/or images of his goods to potential customers.

Claims 14-24, 29, and 32

Claims 14, 15, 18, 20, 24, 29, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (U.S. Patent 6,202,051). As per claim 14, Woolston discloses a virtual shopping mall system, established by using a computer system, the computer being established on a plurality of chain stores which are chained in advance to one another to form a physical distribution system, each of said chain stores including a terminal base unit for registering virtual goods information including an image, said terminal base units being connectable to the virtual shopping mall by a communication line, said virtual shopping mall system comprising: a commercial goods managing database, which is provided to a seller and registers virtual goods information, which corresponds to a seller's real goods, from one of said terminal base units provided in one of the chain stores to the virtual shopping mall after receiving said virtual goods information from said seller, said registering virtual goods information including

capturing the image of said real goods as a part of said virtual goods information (column 3, lines 9-15 and 50-64; column 4, lines 20-46). Woolston discloses ordering delivery of physical goods to a buyer's desired location, implying a delivery setting section setting a delivery path on the physical distribution system for delivering said real goods from the seller to the buyer, from which the buyer receives the real goods (column 5, lines 20-30), when a trade has been established between the seller and the buyer who is presented with said virtual goods information in the database (column 6, line 67, through column 5, line 19). The delivery setting section would have been obvious to one of ordinary skill in the art at the time of applicant's invention, because without the real goods being delivered, the system of Woolston would be nonfunctional.

As per claim 15, Woolston discloses a that the virtual shopping mall system comprises a plurality of real terminal base units, each of which is installed at a real terminal base, the terminal base units connecting and communicating with a virtual shopping mall operations apparatus that manages said commercial goods managing database (column 2, lines 26-43; column 3, lines 9-15 and 33-64; column 8, lines 11-15; Figure 1).

As per claim 18, Woolston discloses a section for generating virtual goods information, which generates virtual goods information that corresponds to real goods of a seller who is an owner (or at least operator/purveyor) of a virtual shop (column 2, lines 26-43; column 3, line 50, through column 4, line 11).

As per claim 20, Woolston discloses that the section for generating virtual goods information comprises an image capturing unit, which captures an image of real goods

that are brought to said terminal base by said seller (column 3, lines 50-64; column 4, lines 18-31; column 8, lines 11-15; Figure 1).

As per claim 24, Woolston discloses a section for searching, which searches virtual goods information managed by a virtual shopping mall operations apparatus (column 7, lines 9-49).

As per claim 29, Woolston discloses that the virtual shopping mall is operated by the computer [system] devoid of a seller opening a virtual shop (column 4, lines 18-46; the seller does not open a virtual shop in this example, the seller being distinct from the consignment node user).

As per claim 32, Woolston discloses that the terminal base unit comprises an image capturing unit for capturing the image of said real goods as said virtual goods information (column 3, lines 50-64; column 4, lines 20-46; column 8, lines 11-15; Figure 1).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston as applied to claim 15 above, and further in view of Scisco ("Tend the Store for World Wide Orders"). As per claim 16, Woolston discloses virtual shops for the various sellers (column 2, lines 26-43; column 3, line 50, through column 4, line 11). Woolston does not expressly disclose setting up a virtual shop (at least, a virtual shop distinct from the rest of the virtual mall) for each of said sellers n said computer system, but Scisco discloses a shop managing database, which sets up a virtual shop for selling goods for each of the sellers on said computer system; and a section for processing an owner registration procedure for sellers who want to open a virtual shop and be the

owner thereof (first eleven paragraphs; final "Step by Step" section). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the virtual shopping mall system comprise a shop managing database and processing section, for the obvious advantage of setting up virtual shops and forming a trading network such as Woolston discloses.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston as applied to claim 15 above, and further in view of view of Galler ("IP: NYT Digital Commerce: Is Delivery the Dealbreaker for E-Commerce?"). As per claim 17, Woolston discloses that the terminal base units function as places for sellers to bring real goods, through communication of information with the virtual shopping mall operations apparatus (column 3, lines 50-64; column 4, lines 18-46), but does not disclose that the terminal base units also function as places for a buyer to receive said real goods. However, Galler teaches delivering products ordered in electronic commerce to bases at chain stores where buyers receive the real goods (four paragraphs beginning from, "Packagenet, a Fairfield, Iowa, company"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the terminal base units to function as places for buyers to receive said real goods, for the stated advantage of giving consumers a handy place to pick up packages at convenient times and to help carriers solve the "stop cost" problem by letting them deliver a neighborhood's package to a single location.

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston as applied to claim 18 above, and further in view of Cisco ("Tend the

Store for World Wide Orders"). As per claim 19, Scisco discloses a media equipment device, which reads image data of real goods from a recording medium (two paragraphs following "Show, as Well as Tell"; also "DISPLAY YOUR WARES" paragraph near the end). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a media equipment device reading image data, for the obvious advantage of making existing image data available on the virtual shopping mall, without the need to make new images.

As per claim 21, Scisco disclose that the section for generating virtual goods information comprises a picture reading unit, which obtains image data of the real goods from a picture of the real goods brought in to the terminal base by the seller (two paragraphs following "Show, as Well as Tell"; also "DISPLAY YOUR WARES" paragraph near the end). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to include such a picture reading unit, obtaining image data from a picture, for the obvious advantage of making existing image data available on the virtual shopping mall, without the need to make new images.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston as applied to claim 15 above, and further in view of official notice. As per claim 22, Woolston discloses an image capturing unit, which is used for generating virtual goods information that corresponds to real goods (column 3, line 50, through column 4, line 11). Woolston does not disclose that the virtual shopping mall system comprises a section for managing, which manages information about leasing to a seller,

or an owner of a virtual shop. However, official notice is taken that it is well known to lease equipment, and thus to manage information about leasing. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the virtual shopping mall system comprise a section for managing, which manages information about leasing to a seller, or an owner of a virtual shop, for the obvious advantages of profiting from rental fees for such image capture units or other equipment used for the consignment nodes of Woolston, and doing more business, with consequent increased profits.

As per claim 23, Woolston does not disclose a catalog printing apparatus, which prints out a catalog of virtual goods information, but official notice is taken that catalog printing apparatus is well known. (Many merchants print catalogs; furthermore, many PC's have printers which can be used to print on-line catalogs, or parts thereof, if the PC user chooses to do so.) Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the shopping mall system further comprise a catalog printing apparatus, for the obvious advantage of making printed catalogs available to potential buyers without Internet access, or without Internet access at the time they wish to study and order from a catalog.

Claims 25, 30, and 33

Claims 25, 30, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston (U.S. Patent 6,202,051) in view of official notice. As per claim 25, Woolston discloses a method for operating a virtual shopping mall by using a

computer system, the computer system being established on a plurality of chain stores which are chained in advance to one another to form a physical distribution system, each of said chain stores including a terminal base unit for registering virtual goods information including an image, said terminal base units being connectable to the virtual shopping mall by a communication line, said method comprising: registering virtual goods information, which corresponds to a seller's real goods, from one of said terminal base units provided in one of the chain stores to the virtual shopping mall after receiving said virtual goods information from said seller, said registering virtual goods information including capturing the image of said real goods as a part of said virtual goods information (column 3, lines 50-64; column 4, lines 20-46); intermediating business between said seller and a buyer on said virtual shopping mall by presenting said virtual goods information to the buyer (Abstract; column 4, line 66, through column 5, line 19); and achieving business on said virtual shopping mall (Abstract; column 4, line 66, through column 6, line 49). Woolston discloses ordering delivery of physical goods to a buyer's desired location, implying setting a delivery path on the physical distribution system for delivering said real goods from the seller to the buyer, from which the buyer receives the real goods (column 5, lines 20-30), when a trade has been established between the seller and the buyer who is presented with said virtual goods information in the database (column 6, line 67, through column 5, line 19). The setting of a delivery path would have been obvious to one of ordinary skill in the art at the time of applicant's invention, because without the real goods being delivered, the system of Woolston would be nonfunctional.

Woolston discloses a computerized electronic database system (e.g., Abstract); Woolston does not expressly disclose a recording medium which stores a program that can be read by a computer, wherein the program is a program to operate a virtual shopping mall, the program comprising instructions for performing the method steps, but official notice is taken that it is well known to use recording media storing programs to instruct computers to carry out methods. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to use such a recording medium storing a program, for the obvious advantage of enabling the computerized database system to carry out its disclosed functions, saving the cost and trouble of hiring human beings to perform the steps of the method manually.

As per claim 30, Woolston discloses that the virtual shopping mall is operated by the computer [system] devoid of a seller opening a virtual shop (column 4, lines 18-46; the seller does not open a virtual shop in this example, the seller being distinct from the consignment node user).

As per claim 33, Woolston discloses that the terminal base unit comprises an image capturing unit for capturing the image of said real goods as said virtual goods information (column 3, lines 50-64; column 4, lines 20-46; column 8, lines 11-15; Figure 1).

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims, and also rewritten to overcome the objection to claim 1 and its dependents.

The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record, Woolston (U.S. Patent 6,202,051), discloses a method for operating a virtual shopping mall, including most of the limitations of claims 1 and 2, while the remaining limitations of claim 1 is taught by Galler ("IP: NYT Digital Commerce: Is Delivery the Dealbreaker for E-Commerce?"), as set forth above. Woolston further discloses that a franchisee may be restricted to selling a particular category of goods, and there is also prior art for charging sellers fees to display their goods information on a virtual shopping mall. However, neither Woolston nor any other prior art of record discloses, teaches, or reasonably suggests setting the maximum value of the number of categories of said virtual goods which can be displayed on the virtual shopping mall according to the fee charged to the seller. The anonymous article, "CNN Looking to Partner with Drug Store for Online Mall," discloses an online vendor offering retailers category exclusivity, presumably for payment, but this does not meet the claim limitations, even granting the "presumably."

Response to Arguments

Applicants' arguments filed November 15, 2004 (date of the RCE filing which led to the entry of the amendments and arguments of October 4, 2004), have been fully considered but they are not persuasive. Applicants do not argue to any major degree, but merely summarize the grounds for rejection, traverse the rejections, and summarize Applicants' amendments. Examiner holds that the claims, as currently amended, are not patentable, as set forth above, although claim 8 could apparently be made allowable, also as set forth above.

Furthermore, the Appeal Brief of April 13, 2005, has also been considered, and found essentially unpersuasive, although the rejections have been rewritten to require

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fewer references, mooted one argument presented by Applicants. The number of references relied upon is now smaller, and it may further be observed that the rejections use multiple rejections describing the same (PackageNet) system, e.g., Galler and also "Microsoft Plaza" in claim 1. Therefore, fewer prior art systems than references are being combined.

The Appeal Brief essentially repeats the arguments which were addressed in the Response to Arguments section of the Final Rejection mailed July 17, 2004, and which Examiner therefore reiterates, without considering it necessary to reprint. In particular, references supporting Examiner's takings of official notice have already been made of record.

Response to Arguments

Applicant's arguments with respect to claims 1-33 have been considered but are moot in view of the new ground(s) of rejection.

Examiner also wishes to point out once again that taking of official notice is permitted, and that support for the facts of which official notice is taken was provided in the previous Office Action mailed July 13, 2004. It is also dubious whether Applicant's criticisms of Examiner's use of official notice constitute adequate traversal, as defined below:

The Manual of Patent Examination Procedure (2144.03 (C)) states, in regard to traversal of Official Notice:

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence.

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common

knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without reference to the examiner's assertion of official notice would be inadequate.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The anonymous article, "Staples, Inc., Licenses NetResults ProShop for Business-to-Business E-Commerce," discloses a system for creating an electronic store, with virtual mall support.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's current acting supervisor, Jeffrey Smith, can be reached at 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas D. Rosen
NICHOLAS D. ROSEN
PRIMARY EXAMINER
May 26, 2006